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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN FREDRIC WESTON,

Defendant and Appellant.

C085788

(Super. Ct. No. 04F02003)

Defendant John Fredric Weston appeals an order denying his postjudgment motion to correct an alleged error in his presentence custody credit. He argues the sentencing court erred in failing to award presentence custody credit from the time of his arrest to the time he was sentenced in this case. We asked for supplemental briefing addressing whether defendant is entitled to presentence custody credit from the date his bail was exonerated until his sentence in this matter, without regard to a preexisting federal hold and any custody credit awarded against his sentence in that federal case, which happened after his sentencing in this matter.

We conclude that defendant is entitled to additional presentence custody credit and modify the judgment accordingly. We affirm the judgment as modified.

BACKGROUND

The trial court sentenced defendant for multiple violations of Penal Code section 288, subdivision (a),¹ imposing a total term of 20 years and awarding him 69 days of presentence custody credit plus 10 days of conduct credit for a total of 79 days of credit. An unpublished opinion of this court (*People v. Weston* (May 30, 2016, C049618)) affirmed defendant's conviction and ordered an amendment of the abstract of judgment to reflect the trial court's imposition of sentence on count 13.

In 2014 defendant wrote the probation department requesting additional custody credits, a request the trial court ultimately denied. On July 5, 2017, defendant filed a proper motion for modification of the abstract of judgment, seeking to modify his presentence credit, alleging he should have been awarded 242 days of pretrial custody credit, rather than the 79 days received. The court denied this motion on September 22, 2017. Defendant timely appealed.

DISCUSSION

Defendant argues the trial court erred in failing to award him presentence custody credit from the time of his arrest in this case to the time of his sentencing. While the argument suffers from factual errors, we find some merit as discussed herein.

Defendant was arrested in this case on February 25, 2004, and he remained in custody at the Sacramento County jail until his *release* on bond on March 13, 2004. This equals 18 days of custody time.²

¹ Undesignated statutory references are to the Penal Code.

² Defendant was also apparently awarded presentence custody credit for time spent in custody between February 2, 2005, and March 25, 2005. This totals 51 days. However, the basis for awarding custody between these days does not appear in the record before us

Thereafter, on July 26, 2004, defendant was arrested and taken into custody on an unrelated federal matter and held in the Sacramento County jail. A document attached to defendant's request to modify his custody credits reflects a total of 242 presentence custody days between July 26, 2004, and defendant's sentencing on March 25, 2005. It was presumably on this basis that defendant sought to increase his pretrial custody credits to 242 days. On appeal, however, defendant originally asserted he was entitled to 396 days of actual credit because he was in custody from February 24, 2004, to March 25, 2005. This is contrary to the record.

Defendant was released on bond in this matter from March 13, 2004, until his bail was exonerated after his conviction on November 5, 2004; at this point, defendant was already in custody on the federal hold.

As explained in *People v. Bruner* (1995) 9 Cal.4th 1178, 1180: "Penal Code section 2900.5 provides that a convicted person shall receive credit against his sentence for all days spent in custody, including presentence custody (subd. (a)), but 'only where the custody to be credited is attributable to proceedings related to the *same conduct* for which the defendant has been convicted' (subd. (b), italics added). The statute's application is clear when the conduct that led to the conviction and sentence was the sole cause of the custody to be credited. But difficult problems arise when, as often happens, the custody for which credit is sought had multiple, unrelated causes."

Defendant originally argued that under *People v. Lathrop* (1993) 13 Cal.App.4th 1401, 1405, he was entitled to credit for all time spent in custody leading up to his sentence in this case. This argument ignored the fact that he posted bail in this matter on March 13, 2004, and remained free until arrested on federal charges. Not until his conviction in this matter and the exoneration of the bail posted on March 13, 2004, could

and is supported only by the handwritten notes of an unknown person on defendant's 2014 request for modification of custody credits.

his custody be attributed to the present case. Thus, defendant is not entitled to credit from the time of his detention in the federal matter on July 26, 2004, leading up to his November 5, 2004 conviction. (*People v. Ford* (1980) 113 Cal.App.3d 429, 432-433 [defendant not entitled to custody credit arising from subsequent detention in a new matter where defendant's original bail was not exonerated upon arrest and detention in the subsequent matter].)

However, the question remains as to whether defendant is entitled to custody credit for the time spent in jail after his conviction and exoneration of bail in this matter leading up to his sentencing in this case where defendant was also subject to and in custody on a federal hold for an unrelated matter that was still pending trial.³ This period runs from November 5, 2004, to March 25, 2005, for a total of 140 days.

Consistent with *People v. Lathrop*, which directs that defendant is entitled to custody credits on the first sentenced matter without regard to any dual custody credits that may be awarded in the second case, we conclude that defendant is entitled to the 158 days⁴ of actual custody time. (*People v. Lathrop, supra*, 13 Cal.App.4th at p. 1405; see also *In re Marquez* (2003) 30 Cal.4th 14, 22 [credit was properly applied to conviction that occurred first and became available for use against the second conviction only after the first conviction was reversed].) There being nothing in the record to suggest that

³ On May 3, 2018, we granted defendant's request for judicial notice of the criminal docket in defendant's federal case, which reflects that the matter was still unresolved in November of 2004, with sentencing on that matter occurring in August 2005.

⁴ This reflects the 18 days defendant was in custody before being released on bond plus the 140 days defendant was in custody after his bail was exonerated leading up to his sentencing in this matter.

defendant should be disallowed conduct credit, we award 24 days of conduct credit⁵ for a total of 182 days of credit. Defendant's supplemental letter brief concurs in this result.

DISPOSITION

The judgment is modified to reflect 158 days of actual credit and 24 days of conduct credit for a total of 182 days of credit. The trial court shall prepare an amended abstract of judgment, which shall be forwarded to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

RAYE, P. J.

We concur:

DUARTE, J.

HOCH, J.

⁵ Pursuant to section 2933.1, defendant is entitled to conduct credit not to exceed 15 percent of actual custody time owing to his conviction for a violation of section 288, subdivision (a).